

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

CRIMINAL NO. 10-20403

Plaintiff,

HON. NANCY G. EDMUNDS

v.

VIOLATIONS:

D-1 KWAME M. KILPATRICK,

18 U.S.C. § 1962(d) (RICO conspiracy)

D-2 BOBBY W. FERGUSON,

18 U.S.C. § 666(a) (bribery)

D-3 BERNARD N. KILPATRICK,

18 U.S.C. § 1951 (extortion)

D-4 VICTOR M. MERCADO,

18 U.S.C. §§ 1341, 1343 (mail/wire fraud)

Defendants.

18 U.S.C. § 1512 (obstruction of justice)

26 U.S.C. § 7206(1) (false tax return)

26 U.S.C. § 7201 (tax evasion)

18 U.S.C. § 2 (aiding & abetting)

18 U.S.C. § 1963 (forfeiture)

**PRELIMINARY JURY INSTRUCTIONS**

NOW COMES the United States of America, by and through United States Attorney Barbara McQuade and Assistant United States Attorneys Mark Chutkow, R. Michael Bullotta, Jennifer Blackwell, and Eric Doeh, Assistant United States Attorneys for the Eastern District of Michigan, Southern Division, and pursuant to Rule 30 of the Federal Rules of Criminal Procedure, requests this Court to charge the jury in this case in accordance with the attached preliminary instructions.

Counsel for Defendants Kwame Kilpatrick, Bobby Ferguson, Bernard Kilpatrick, and Victor Mercado have reviewed and concur in these preliminary instructions.

Respectfully submitted,

BARBARA L. MCQUADE  
United States Attorney

s/ MARK CHUTKOW  
Assistant U.S. Attorney  
211 West Fort Street, Suite 2001  
Detroit, MI 48226  
(313) 226-9168  
Email: mark.chutkow@usdoj.gov

s/ R. MICHAEL BULLOTTA  
Assistant U.S. Attorney  
211 West Fort Street, Suite 2001  
Detroit, MI 48226  
(313) 226-9507  
Email: michael.bullotta@usdoj.gov

s/ JENNIFER L. BLACKWELL  
Assistant U.S. Attorney  
211 West Fort Street, Suite 2001  
Detroit, MI 48226  
(313) 226-9165  
Email: jennifer.blackwell3@usdoj.gov

s/ ERIC DOEH  
Assistant U.S. Attorney  
211 West Fort Street, Suite 2001  
Detroit, MI 48226  
(313) 226-9569  
Email: eric.doeh@usdoj.gov

Dated: September 19, 2012

**COURT'S INSTRUCTION NO. \_\_\_\_\_**

**INTRODUCTION**

(1) Members of the jury, now that you have been sworn, I will give you some preliminary instructions to guide you during the trial.

(2) I will start by explaining your duties and some general rules that apply in every criminal case.

(3) Then I will briefly explain the elements, or parts, of the crime that the defendants are accused of committing. These are only preliminary, or introductory, instructions. I will give you detailed instructions on the law at the end of the case, and those instructions will control your deliberations and decision.

(4) Please listen very carefully to everything I say.

**COURT'S INSTRUCTION NO. \_\_\_\_\_**

**JURORS DUTIES**

(1) You have two main duties as jurors. The first one is to decide what the facts are from the evidence that you see and hear in court. Deciding what the facts are is your job, not mine. Nothing I may say or do during the course of the trial is intended to indicate nor should be taken by you as indicating what your verdict should be.

(2) Your second duty is to take the law that I give you, apply it to the facts, and decide if the government has proven that the defendants are guilty beyond a reasonable doubt. While you are the sole judge of the facts of the case, it is my job to instruct you about the law, and you are bound by the oath to follow the instructions that I give you, even if you personally disagree with them. This includes the instructions that I give you before, during, and at the close of trial. All the instructions are important, and you should consider them together as a whole.

(3) The lawyers may talk about the law during their arguments. But if what they say is different from what I say, you must follow what I say. What I say about the law controls.

(4) Perform these duties fairly. Do not let any bias, sympathy, or prejudice that you may feel toward one side or the other influence your decision in any way.

**COURT'S INSTRUCTION NO. \_\_\_\_\_**

**PRESUMPTION OF INNOCENCE, BURDEN OF PROOF, REASONABLE DOUBT**

(1) As you know, each of the defendants have pleaded not guilty to the crimes charged in the Indictment. The Indictment is not any evidence at all of guilt. It is just the formal way that the government tells the defendants what crimes they are accused of committing. It does not even raise any suspicion of guilt.

(2) Instead, the defendants start their trial with a clean slate, with no evidence at all against them, and the law presumes that they are innocent. This presumption of innocence stays with each of the defendants, unless the government presents evidence here in court that overcomes the presumption, and convinces you beyond a reasonable doubt that any or all of the defendants are guilty.

(3) This means that the defendants have no obligation to present any evidence at all, or to prove to you in any way that they are innocent. It is up to the government to prove that they are guilty, and this burden stays on the government from start to finish. You must find the defendants not guilty unless the government convinces you beyond a reasonable doubt that they are guilty.

(4) The government must prove every element of the crime charged beyond a reasonable doubt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt. Possible doubts or doubts based purely on speculation are not reasonable doubts. A reasonable doubt is a doubt based on reason and common sense. It may arise from the evidence, the lack of evidence, or the nature of the evidence.

(5) Proof beyond a reasonable doubt means proof which is so convincing that you would not hesitate to rely and act on it in making the most important decisions in your own lives. If you are

convinced that the government has proven the defendants guilty beyond a reasonable doubt, say so by returning a guilty verdict. If you are not convinced that the government has met its burden of proof beyond a reasonable doubt, say so by returning a not guilty verdict.

**COURT'S INSTRUCTION NO. \_\_\_\_\_**

**EVIDENCE DEFINED**

(1) You must make your decision based only on the evidence that you see and hear in court. Do not let rumors, suspicions, or anything else that you may have seen or heard outside of court influence your decision in any way.

(2) The evidence in this case includes only what the witnesses say while they are testifying under oath; the exhibits that I allowed into evidence; the stipulations that the lawyers agree to; and the facts that I may judicially notice.

(3) Nothing else is evidence. The lawyers' statements and arguments are not evidence. Their questions and objections are not evidence - only the answer that the witnesses may give. My legal rulings are not evidence. And my comments and questions are not evidence.

(4) During the trial I may not let you hear the answers to some of the questions that the lawyers ask. I also may rule that you cannot see some of the exhibits that the lawyers want you to see. And sometimes I may order you to disregard things that you see or hear, or I may strike things from the record. You must completely ignore all of these things

(5) Make your decision based only on the evidence, as I have defined it here, and nothing else.

**COURT'S INSTRUCTION NO. \_\_\_\_\_**

**DIRECT AND CIRCUMSTANTIAL EVIDENCE**

(1) Now, some of you may hear the terms “direct evidence” and “circumstantial evidence.”

(2) Direct evidence is simply evidence like the testimony of an eyewitness which, if you believe it, directly proves a fact. If a witness testified that he saw it raining outside, and you believed him, that would be direct evidence that it was raining.

(3) Circumstantial evidence is simply a chain of circumstances that indirectly could prove a fact. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.

(4) It is your job to decide how much weight to give the direct and circumstantial evidence. The law makes no distinction between the weight that you should give to either one, or say that one is any better evidence than the other. You should consider all the evidence, both direct and circumstantial, and give it whatever weight you believe it deserves.



**COURT'S INSTRUCTION NO. \_\_\_\_\_**

**SUMMARY OF COUNTS AND LAW**

**Introduction**

I will give you detailed instructions on the law at the end of the case. Those instructions will control your deliberations and decision, and those instructions will list all of the elements that the government needs to prove beyond a reasonable doubt for you to find the defendants guilty for each count. But in the meantime, in order to help you follow the evidence during the trial, I will now give you a brief summary of the crimes charged in the indictment that the government must prove to make its case.

Whether there is a violation of local, state, or federal law, every crime is made up of elements, and the government always has the burden of proving each element of the crime beyond a reasonable doubt.

**Count One – RICO Conspiracy Count**

Count One charges that from about 2000 until about 2009, Kwame Kilpatrick, Bobby Ferguson, Bernard Kilpatrick, and Victor Mercado knowingly conspired, or agreed, to conduct the affairs of an enterprise through a pattern of racketeering activity, that included the crimes of extortion, bribery, obstruction of justice, and mail and wire fraud.

In considering this count, you will be asked in the final instructions to consider the following issues: Was there an agreement between two or more people? Did the agreement affect interstate commerce? Did the defendant join the agreement with knowledge of its purpose? Was the defendant associated with the enterprise? And did the defendant agree that someone, not necessarily the defendant himself, would commit at least two racketeering acts?

### **Counts Two Through Five, Seven Through Eleven, and Fifteen - Extortion**

Counts Two through Five, Seven through Eleven, and Fifteen charge the defendants with interference with commerce by extortion through wrongful use of fear or under color of official right.

The government must prove beyond a reasonable doubt that the defendant obtained money, property, or something of value from another person with the other person's consent, but that this consent was compelled by the wrongful use or threat of fear, including fear of economic harm.

These counts also charge Kwame Kilpatrick with extortion under color of official right. The government must prove beyond a reasonable doubt that the defendant, a public official, knowingly and deliberately used the defendant's official position to obtain money, property, or something of value, to which the defendant had no right.

Bobby Ferguson, Bernard Kilpatrick, and Victor Mercado have been charged with aiding and abetting extortion under color of official right. The government must prove beyond a reasonable doubt that Kwame Kilpatrick committed the crime of extortion under color of official right; that the defendant helped to commit the crime; and that the defendant intended to help commit the crime.

### **Count Fourteen – Obstruction of Justice**

Count Fourteen charges Victor Mercado with obstruction of justice, alleging that the defendant's testimony during an official proceeding corruptly obstructed, influenced, or impeded the official proceeding.

### **Counts Sixteen and Seventeen - Bribery**

Counts Sixteen and Seventeen charge Kwame Kilpatrick with bribery. The government must prove beyond a reasonable doubt that the defendant, an agent of the City of Detroit; accepted, agreed to accept, solicited, or demanded, something of value from another person, with the intent to be influenced or rewarded, with respect to a transaction of the City of Detroit; and that the value of the transaction to which the payment related exceeded \$5,000.

Counts Sixteen and Seventeen also charge Bobby Ferguson with aiding and abetting bribery relating to an organization or government which receives federal funds. The government must prove beyond a reasonable doubt that Kwame Kilpatrick committed the crime of bribery, that the defendant helped to commit the crime; and that the defendant intended to help commit or encourage the crime.

### **Counts 18 Through 30 – Mail and Wire Fraud**

Counts 18 through 27 charge Kwame Kilpatrick with mail fraud. Counts 28 through 30 charge Kwame Kilpatrick with wire fraud. Each of these counts alleges that Kwame Kilpatrick knowingly devised a scheme to defraud donors to the Kilpatrick Civic Fund of money or property; that the scheme included a material misrepresentation, or concealment of material facts; that Kwame Kilpatrick had the intent to defraud; and that he used, or caused someone else to use, the mail or a wire communication in furtherance of the scheme.

### **Counts 31 Through 35, 37 Through 39 - False Tax Returns**

Counts 31 through Count 35 charge Kwame Kilpatrick with making and subscribing false tax returns for calendar years 2003, 2004, 2005, 2006, and 2007.

Counts 37, 38, and 39 charge Bernard Kilpatrick with making and subscribing false tax returns for calendar years 2004, 2005, and 2007.

The government must prove beyond a reasonable doubt that the defendant wilfully and knowingly made, or caused to be made, and signed a tax return that contained false information, that the false information was material, and that the tax return contained a written declaration that it was being signed subject to the penalties of perjury.

**Count 36 – Tax Evasion**

Count 36 charges Kwame Kilpatrick with income tax evasion. The government must prove beyond a reasonable doubt that a substantial income tax was due from the defendant, and that the defendant wilfully attempted to evade or defeat this tax, as detailed in the indictment.

**COURT INSTRUCTION NO. \_\_\_\_**

**CONDUCT OF THE JURY**

Now, a few words about your conduct as jurors.

First, I instruct you that during the trial you are not to discuss the case with anyone or permit anyone to discuss it with you. Until you retire to the jury room at the end of the case to deliberate on your verdict, you simply are not to talk about this case.

Second, do not read or listen to anything touching on this case in any way. If anyone should try to talk to you about it, bring it to the court's attention promptly.

Third, do not try to do any research or make any investigation about the case on your own.

Do not form any opinion until all the evidence is in. Keep in an open mind until you start your deliberations at the end of the case.

If you wish, you may take notes. But if you do, leave them in the jury room when you leave at night. And remember that they are for your own personal use--they are not to be given or read to anyone else.

Finally, you, as jurors, must decide this case based solely on the evidence presented here within the four walls of this courtroom. This means that during the trial you must not conduct any independent research about this case, the matters in the case, and the individuals or corporations involved in the case. In other words, you should not consult dictionaries or reference materials, search the internet, websites, blogs, or use any other electronic tools to obtain information about this case or to help you decide the case. Please do not try to find out

information from any source outside the confines of this courtroom.

Until you retire to deliberate, you may not discuss this case with anyone, even your fellow jurors. After you retire to deliberate, you may begin discussing the case with your fellow jurors, but you cannot discuss the case with anyone else until you have returned a verdict and the case is at an end.

I know that many of you use cell phones, Blackberries, the internet and other tools of technology. You also must not talk to anyone at any time about this case or use these tools to communicate electronically with anyone about the case. This includes your family and friends. You may not communicate with anyone about the case on your cell phone, through e-mail, Blackberry, iPhone, text messaging, or on Twitter, through any blog or website, including Facebook, Google+, My Space, LinkedIn, or YouTube. You may not use any similar technology of social media, even if I have not specifically mentioned it here. I expect you will inform me as soon as you become aware of another juror's violation of these instructions.

**COURT INSTRUCTION NO. \_\_\_\_**

**COURSE OF THE TRIAL**

The trial will now begin. First the government will make an opening statement, which is simply an outline to help you understand the evidence as it comes in. Next the defendants' attorneys may but do not need to make opening statements. Opening statements are neither evidence nor arguments.

The government will then present its witnesses and counsel for defendant may cross-examine them. Following the government's case, the defendants may, if they wish, present witnesses whom the government may cross-examine. After all the evidence is in, the attorneys will present their closing arguments to summarize and interpret the evidence for you, and I will instruct you on the law. After that you will retire to deliberate on your verdict.

**CERTIFICATE OF SERVICE**

I hereby certify that on September 19, 2012, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing to the following:

James C. Thomas  
Michael C. Naughton  
Harold Z. Gurewitz  
Regina Triplett  
*Attorneys for Kwame Kilpatrick*

Gerald K. Evelyn  
Michael Rataj  
Susan Van Dusen  
*Attorneys for Bobby Ferguson*

John A. Shea  
*Attorney for Bernard Kilpatrick*

Martin E. Crandall  
John Minock  
*Attorneys for Victor Mercado*

s/ MARK CHUTKOW  
Assistant U.S. Attorney  
211 West Fort Street, Suite 2001  
Detroit, MI 48226  
(313) 226-9168  
Email: mark.chutkow@usdoj.gov

Dated: September 19, 2012